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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/521,983

08/17/2005

Nathan Charles Brown

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EXAMINER

CHUI, MEI PING

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

03/19/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/521,983	<b>Applicant(s)</b> BROWN ET AL.	
	<b>Examiner</b> MEI-PING CHUI	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of Action***

Receipt of Appeal Brief filed on 11/20/2009 is acknowledged. Claims 1-10, 12-15 are pending in this application.

Upon further consideration and search, the Examiner has new ground(s) of rejection presented in this Office Action. Accordingly, this action is made NON-FINAL.

### ***Status of Claims***

Accordingly, claims 1-10, 12-15 are presented for examination on the merits for patentability.

Rejection(s) not reiterated from the previous Office Action are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

### ***Response to Arguments***

Applicants' arguments filed on 11/20/2009 have been considered but are moot in view of the new ground of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1-10, 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hall, P. J. (U. S. Patent No. 5,840,289) in view of Carmody, W. J. (U. S. Patent No. 6,468,512).**

***Applicants Claim***

Applicant claims a suspension antiperspirant aerosol composition comprising (i) a milled activated aluminum chlorohydrate (AACH) having non-hollow particles, (ii) a carrier fluid comprising a masking oil of viscosity  $10^4$  mm<sup>2</sup>/s or greater and (iii) a propellant gas. Applicant also claims a method of manufacturing a suspension antiperspirant aerosol composition and a method of reducing perspiration and giving low visible deposits comprising an application to the human body of a suspension antiperspirant aerosol composition.

***Determination of the scope and content of the prior art  
(MPEP 2141.01)***

Hall, J. P. teaches a suspension antiperspirant aerosol composition suitable for topical application to human skin and a method of utilizing said suspension antiperspirant aerosol composition to reduce visible whitening (column 1, lines 7-8 and 48-54).

Hall, J. P. teaches that the composition comprising (i) 1-30 % by weight of non-hollow milled activated aluminum chlorohydrate, (ii) an emollient liquid masking agent, and (iii) 30-90 % of a propellant (column 1, lines 57-62). More specifically, Hall, J. P. teaches that the milled activated aluminum chlorohydrate (**AACH**) comprises non-hollow particles and has a continuous refractive index of 1.52 to 1.57. Hall, J. P. also teaches that the aerosol active AACH is in the form of particles of mean diameter (e.g. 20-30  $\mu\text{m}$ ), which is produced by milling down larger particle size particles (e.g. 100  $\mu\text{m}$ ) to smaller mean particle size particles (e.g. 30  $\mu\text{m}$ ) to result in reduced whitening effect (see column 3, lines 49-53; column 4, lines 6-12 and 36-38).

Hall, J. P. further teaches that the emollient liquid masking agent, which has a refractive index of 1.40 to 1.57, helps eliminating visible whitening by matching its refractive index with the particle shell of the AACH (column 2, lines 10-11 and column 3, lines 55-59).

In addition to masking visible whiteness of the AACH actives, the emollient liquid masking agent can also serve as a diluent, lubricant or spreading agent to facilitate uniform distribution of the antiperspirant material on the skin (column 2, line 16-19, 35-49),

Further, Hall, J. P. teaches that the hydrophobic emollient liquid carrier preferably comprises a volatile silicone fluid and other ingredients, i.e. a bulking or suspending

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agent to prevent caking or settling out of the antiperspirant (column 2, lines 50-59; column 3, lines 13, 23; column 4, line 50).

Hall, J. P. teaches that the composition comprises a propellant gas for expelling the composition from a container and a carrier, which can be any liquefiable gas known in the art for use in propellant driven aerosol container, in an amount less than 90 % by weight (column 2, line 66 to column 3, line 5).

***Ascertainment of the difference between the prior art and the claims***  
***(MPEP 2141.02)***

Hall, J. P. does not teach the antiperspirant composition comprises silicone oil type of masking agent, which having viscosity of  $10^4$  mm<sup>2</sup>/s or greater, as claimed. However, these deficiencies are cured by Carmody, W. J.

Carmody, W. J. teaches an antiperspirant composition, which is substantially clear and aesthetically appealing, and can provide excellent coverage and physical integrity at the surface of the skin, particular underarm (column 2, line 23-36). Carmody, W. J. also teaches that the antiperspirant comprises one or more volatile and/or non-volatile silicone oils, which functions to thicken and soften the composition and provide softening and conditioning effects to the skin (column 3, line 54-61). Such suitable silicone oils can include low viscosity volatile silicone oils and non-volatile silicone oils, i.e. high viscosity linear dimethicones from about 5 to about 100,000 centistoke (column 4, line 16-20). Carmody, W. J. teaches that the composition can incorporate refractive index modifiers to mask off colors of antiperspirant active or other ingredients, wherein the oil soluble refractive index modifier can include dimethicone or mineral oil, which has

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refractive index of 1.4030 and 1.4590, respectively (column 4, line 60 to column 5, line 30).

***Finding of prima facie obviousness Rational and Motivation  
(MPEP 2142-2143)***

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to combine the teaching of Hall, J. P. with Carmody, W. J. to arrive at the claimed invention.

One of ordinary skill would have been motivated to follow the guidance of Hall, J. P. by incorporating the components: AACH as antiperspirant active, a volatile silicone fluid as carrier, a hydrophobic emollient liquid as masking agent to reduce the visible whitening and a propellant gas together to produce a suspension antiperspirant aerosol composition suitable for topical application to human skin and has desirable reduced visible whitening effect, as taught by Hall, J. P.

One of ordinary skill also would have been motivated to further incorporate an additional component, i.e. a silicone oil having high viscosity, into the antiperspirant to thicken and soften the composition, and to provide softening and conditioning effects to the skin of the user, as taught by Carmody, W. J.

From the teaching of the references, one of ordinary skill in the art would have had a reasonable expectation of success to arrive at the claimed invention. Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

***Conclusion***

No claims are allowed.

***Contact Information***

Any inquiry concerning this communication from the Examiner should direct to Helen Mei-Ping Chui whose telephone number is 571-272-9078. The examiner can normally be reached on Monday-Thursday (7:30 am – 5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either PRIVATE PAIR or PUBLIC PAIR. Status information for unpublished applications is available through PRIVATE PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the PRIVATE PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/H. C./  
Examiner, Art Unit 1616

*/Mina Haghighatian/*  
Primary Examiner, Art Unit 1616